80-890

No.

Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

JAMES J. LIOTTA,
Petitioner,

v.

NATIONAL FORGE COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

STAUGHTON LYND
Northeast Ohio Legal Services
804 Metropolitan Tower
Youngstown, Ohio 44503

MICHAEL CARR
127 West 6 Street
Erie, Pennsylvania 16501
Counsel for Petitioner

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

QUESTION PRESENTED

In a §301 action brought by employees under *Hines* v. *Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976), and filed subsequent to an arbitration award, is the applicable statute of limitations that governing contract actions or that governing suits to vacate arbitration awards?

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OPINIONS BELOW

The opinion of the United States District Court for the Western District of Pennsylvania on the question presented is not officially reported, but is reprinted as App. A to this petition. The opinion of the Third Circuit Court of Appeals, reversing the district court on the question presented, is not officially reported but is reprinted as App. B to this petition.

JURISDICTION

The judgment of the Third Circuit Court of Appeals was issued on September 10, 1980 (App. C). This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

Section 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. §185(a), provides in pertinent part as follows:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

The Pennsylvania statute of limitations for actions on a written contract, 42 Pa. Cons. St. Ann. §5527 (Purdon), provides in pertinent part as follows:

> **§5527. Six year limitation**
>
> The following actions and proceedings must be commenced within six years:
>
> . . .
>
> (2) An action upon a contract, obligation or liability founded upon a bond, note or other instrument in writing. . . .

(42 Pa. Cons. St. Ann. §5527 was enacted on July 9, 1976 and became effective on June 27, 1978. Predecessor statutes dating back to 1713 also provided a year-six statute of limitations for actions on a written contract.)

The Pennsylvania arbitration statute, 5 Pa. Con. St. Ann. §173 (Purdon), provides:

> **§ 173. Notice of motions, service, stay of proceedings**
>
> Notice of a motion to vacate, modify, or correct an award shall be filed in the prothonotary's office of the court in which the application is made, and to be served

upon the adverse party, or his attorney, within three months after the award is filed, or delivered, as prescribed by law for service of notice of a motion in an action. The court may in all proper cases, upon the filing of the motion, grant a stay of proceedings pending the determination of the motion. 1927, April 25, P.L. 381, No. 248, § 13.

STATEMENT OF THE CASE

Petitioner was discharged on March 16, 1976. Arbitration proceedings were had, and an adverse award issued on August 3, 1976. The instant action was filed March 16, 1978, under Section 301 of the Labor Management Relations Act as amended, 29 U.S.C. §185.[1]

Defendant moved to dismiss the §301 claim on the ground that the 90 day statute of limitations for an action to vacate an arbitration award applied.

On May 22, 1978, the district court denied the motion to dismiss. Citing *Hines* v. *Anchor Motor Freight, Inc., supra,* and *Fannie* v. *Chamberlain Mfg. Corp.*, 455 F.Supp. 65 (W.D. Pa. 1977), the court held that the applicable statute was Pennsylvania's 6 year statute of limitations for actions on a written contract. See App. A.

Subsequently, defendant moved for summary judgment, and the district court granted the motion. Petitioner appealed this decision to the court of appeals, and defendant cross-appealed the district court's previous decision on the statute of limitations issue.

---

[1] Count II of the complaint alleged that plaintiff's discharge violated 42 U.S.C. §1981, and is not relevant to this appeal.

On September 10, 1980, the Third Circuit Court of Appeals affirmed the district court's grant of summary judgment on the §301 claim on statute of limitations grounds. See App. B and C.

This appeal followed.

REASONS FOR GRANTING THE WRIT

1. Two federal courts of appeals have rendered decisions in conflict with the decision of the Third Circuit Court of Appeals on the question presented. In *Smart* v. *Ellis Trucking Co., Inc.*, 580 F.2d 215 (6th Cir. 1978), *cert. den.*, 440 U.S. 958 (1979), the Sixth Circuit Court of Appeals held as follows:

> Ellis argued below that the wrongful discharge claim was time barred. The argument was based on the contention that Appellant is actually seeking to set aside an arbitration award, and that the statute of limitations applicable to a claim for such relief is either three months under the United States Arbitration Act, 9 U S.C. § 12, or twenty days under Michigan General Court Rules 769 dealing with arbitrations. 409 F.Supp. at 131. The District Court found it unnecessary to reach the issue, but Ellis presses it again before this Court. The simplest answer to Ellis' argument is that Appellant's action for wrongful discharge is not in the nature of a motion to vacate or modify an arbitration award, at least to the extent that it states a claim under § 301. Although the effect of a judgment for Appellant would be to nullify the arbitral decision, the § 301 action is "independent" of the grievance process. *See Hines* v. *Anchor Motor Freight,* 424 U.S. at 554, 96 S.Ct. at 1048, 47 L.Ed.2d at 231. Indeed, such a claim can be brought even before an arbitral decision where a union refuses in bad faith to process a grievance. *Vaca* v. *Sipes,* 386 U.S. 171, 186, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967). The fact that the plaintiff must show a flaw in the grievance process as a prerequisite to recovery does not alter the basic focus of the § 301 claim on the propriety of the discharge itself. Since Michigan applies a three year limitation period to wrongful discharge claims such as the one here raised (*see Glowacki, supra*), the action was not time-barred.

580 F.2d at 219 (footnotes omitted).

In *Mitchell* v. *United Parcel Service, Inc.*, 624 F.2d 394 (2d Cir. 1980), *cert. granted*, 49 U.S.L.W. 3270 (Oct. 14, 1980) (No. 80-169, 1980 Term), the Second Circuit Court of Appeals came to the same conclusion as the Sixth Circuit. The court offered the following reasons for its holding:

The effect of applying the statute of limitations for suits to vacate arbitration awards to a §301 action filed subsequent to an arbitration proceeding would be to create one limitations period for §301 actions filed prior to an arbitration award, and another limitations period for §301 actions filed after an arbitration award. "We do not believe that such a fractionalized approach to §301 wrongful discharge actions is warranted." 624 F.2d at 397.

To limit employee §301 actions following an arbitration award to a 90 day period following the adverse arbitral decision would severely restrict the Supreme Court's decision in *Hines* v. *Anchor Motor Freight, Inc., supra. Id.*

§301 actions cannot be equated with direct attacks on arbitration awards, nor can they be viewed as the same threat to the finality of arbitration awards. Post-arbitral actions under §301 require a plaintiff to carry a heavier burden than an action challenging an arbitration award. "There is no need to increase this burden by requiring the employee to commence the action in an unduly short period of time after his discharge." *Id.*

Far from suggesting that a 90 day period was needed to reach the goal of relatively rapid disposition of disputes, the Supreme Court in *Auto Workers* v. *Hoosier Corp.*, 383 U.S. 696, 707 n. 9 (1966), indicated that "unusually short" limitation periods such as a 60 day New Mexico statute should not be applied to §301 actions. 624 F.2d at 398.

Regardless of the merits of the arguments of the Sixth Circuit in *Smart* v. *Ellis, supra,* of the Second Circuit in *Mitchell* v. *United Parcel, supra,* and of petitioner herein, the existing con-

flict among the circuits creates confusion and uncertainty for aggrieved workers, for unions, for employers, and for their respective attorneys.

2. Had the holding of the Third Circuit Court of Appeals in the instant case been law at the time plaintiffs in *Hines* v. *Anchor Motor Freight, Inc., supra,* filed their complaint, the case would have had to be dismissed as out of time and the injustice done to the workers in that situation would never have been corrected. In *Hines,* arbitration was had in July 1967. 424 U.S. at 557. A year later a motel clerk admitted that he rather than the discharged employees had been guilty of dishonesty. 506 F.2d at 1156, quoted 424 U.S. at 559 n. 4. In June 1969, almost two years after the arbitration award, suit was filed in federal district court. 424 U.S. at 558. Although the statute of limitations does not appear to have been pleaded as an affirmative defense in *Hines,* this Court impliedly concluded that a §301 suit filed two years subsequent to an arbitration proceeding was consistent with national labor policy.

3. In *United Parcel Service* v. *Mitchell,* No. 80-169, this Court granted a petition for certiorari to consider the same question as that presented here. Accordingly, the Court should either grant this petition for consideration together with No. 80-169, or hold this petition for disposition in light of the Court's decision in that case.

CONCLUSION

For the reasons set forth above, this Court should grant certiorari to decide the important question presented herein.

Respectfully submitted,

STAUGHTON LYND
Northeast Ohio Legal Services
804 Metropolitan Tower
Youngstown, Ohio 44503

MICHAEL CARR
127 West 6 Street
Erie, Pa. 16501
Counsel for Petitioner

APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES J. LIOTTA
v.
NATIONAL FORGE CO. } Civil Action No. 78-25 Erie

Dated: May 22, 1978.

Memorandum Opinion

Plaintiff's complaint alleges two causes of action: first, under section 301 of the Labor Management Relations Act (29 USCA 185) claiming that the union breached its duty of fair representation in processing grievances of the plaintiff. The second count charges a violation of the Civil Rights Act 42 USCA 1981. Defendant has moved to dismiss.

In approaching a motion to dismiss we must always bear in mind what has been said by the Supreme Court in many cases most recently in Scheuer v. Rhodes, 416 US 232, 40 L Ed 90, 94 S Ct 1683 (1974) where the court quotes Conley v. Gibson, 355 US 41 (1957) as holding "the accepted rule (is) that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief".

Defendant claims that the plaintiff's first cause of action is barred by the Pennsylvania Statute of Limitations providing for an appeal within three months as provided by the Pennsylvania Arbitration Act 5 PS 173 and the U.S. Arbitration Act 9 USC 1, *et seq.*

There are it is true certain decisions prior to Hines v. Anchor Motor Freight Inc. 424 US 554, 96 S Ct 1048, 47 L Ed 2d 231

(1976) to the effect that in a fair representation case the state statute of limitations of 3 months for an appeal from an award of arbitrator should apply. However, since the case of Hines it has been clearly held as noted by Judge Teitelbaum of this court in Fannie v. Chamberlain Mfg. Corp., 455 FS 65 (W.D.Pa. 1977) that "an arbitration decision is not binding on employees where the union has breached its duty of fair representation." In other words the fair representation action is an entirely separate action from the arbitration of the discharge or discipline.

Judge Teitelbaum further went on the hold as we do that the Pennsylvania 6 year contract statute of limitations applies to a breach of the duty of fair representation. Therefore, count 1 must stand.

With respect to count 2 under 1981, there is no question as alleged in the complaint that plaintiff is a white. He alleged that he was discriminated against in his discharge for espousing the cause of blacks at National Forge Company. No state action is involved, however, there is no requirement for such under 1981. While at first blush 1981 would seem to apply only to minority groups such as blacks who are discriminated against, in view of the language that all persons shall have the same right to make and enforce contracts and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, nevertheless, it is obviously clear that if a white working for a negro enterprise is discriminated against he has standing to sue under 1981.

It has further been held in Sullivan v. Little Hunting Park, 396 US 229, 24 L Ed 2d 386, 90 S Ct 400 (1969) that a white person who has been punished for trying to vindicate the rights of non-white minorities has standing to sue under 1981 and 1982. This is the allegation contained in plaintiff's complaint.

To the same effect is the holding of the Second Circuit affirming a suit from the Western District of New York in DeMatteis

v. Eastman Kodak Co., 511 F 2d 306 (1974) wherein the court followed the Sullivan case and held that a claim that Eastman Kodak forced a man into retirement solely because he had sold his house to a black person and thereby precipitated his retirement prematurely stated a cause of action under 1981.

With respect to the statute of limitations under 1981 it is clear that the Pennsylvania 6 year statute of limitations also applies to this cause of action. See Wilson v. Sharon Steel Corp., 549 F 2d 276 (3d cir 1977). and subsequent decision of Judge McCune.

For the above reasons, we will deny the motion to dismiss.

/s/ William Knox
U.S. District Judge

Counsel of record.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JAMES J. LIOTTA
v.
NATIONAL FORGE CO. } Civil Action No. 78-25 Erie

Order

AND NOW, to wit, May 22, 1978, for reasons set forth in the accompanying memorandum,

IT IS ORDERED that defendant's motion to dismiss be and the same hereby is denied.

/s/ Illegible
U.S. District Judge

CC:

M.L. Carr, Esq.
218 Marine Bank Bldg 16501

Staughton Lynd, Esq.
PO Box 849, Youngstown 44501

Richard Zamboldi, Esq.
Commerce Bldg 16501

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 79-2124 and 79-2252

JAMES J. LIOTTA, an individual,
Appellant in No. 79-2124

v.

NATIONAL FORGE COMPANY,
Appellant in No. 79-2252

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT
OF PENNSYLVANIA
(D.C. Civ. No. 78-0025)

Argued: July 8, 1980
Before: SEITZ, *Chief Judge,* VAN DUSEN,
and HIGGINBOTHAM, *Circuit Judges*
(Filed: September 10, 1980)

STAUGHTON LYND (Argued)
804 Metropolitan Tower Building
Youngstown, Ohio 44501

M. L. CARR
127 West 6 Street
Erie, Pennsylvania 16501
Attorneys for Appellant
in No. 79-2124 and
Cross-Appellee in
No. 79-2252

RICHARD H. ZAMBOLDI (Argued)
RICHARD W. PERHACS
Elderkin, Martin, Kelly,
Messina & Zamboldi
800 Commerce Building
Erie, Pennsylvania 16501
Attorneys for Appellee
in No. 79-2124 and
Cross-Appellant in
No. 79-2252

Opinion of the Court

A. LEON HIGGINBOTHAM, JR., *Circuit Judge.*

The appellant, James J. Liotta, formerly President of the Local 1573 of the United Steelworkers of America. AFL-CIO (the Union), was discharged from his employment with the National Forge Company (the Company) on March 16, 1976. This followed his participation in a work stoppage at the Company's Erie, Pennsylvania plant which began on March 3, 1976 and ended on March 11, 1976. Liotta filed a grievance pursuant to the terms of the collective bargaining agreement then in effect. His grievance was denied by an arbitrator on August 3, 1976. On March 16, 1978, he filed this action alleging first that his discharge violated the collective bargaining agreement in violation of Section 301 of the National Labor Relations Act, 29 U.S.C. §185 and that the arbitrator's contrary decision resulted from the Union's breach of its duty of fair representation. Second, he claimed that the Company discharged him because of his espousal of the rights of the Company's black employees, discriminating against him in violation of 42 U.S.C. §1981. Liotta appeals from the entry of summary judgment for the Company. The Company cross appeals on the ground that Liotta's complaint is barred by the applicable statutes of limitations. We conclude that his claim under Section 301 is time barred,

that his claim under 42 U.S.C. §1981 is not time barred, and that summary judgment was inappropriate on his Section 1981 claim because of the existence of material issues of fact. We will therefore affirm in part and reverse in part.

I.

The first question we must answer is whether Liotta's Section 301[1] cause of action was untimely and therefore whether the Company's motion to dismiss should have been granted. The Company's motion was based on the ground that Liotta's claims were barred by the three-month statute of limitations of the Pennsylvania General Arbitration Act, Pa. Stat. Ann. tit. 5 §173 (Purdon 1963). The district court held that the six-year limitations period for actions upon a contract applied.

We believe the district court erred. In *UAW* v. *Hoosier Cardinal Corp.*, 383 U.S. 696, 704-05 (1966), the Supreme Court held that "the timeliness of a §301 suit. . .is to be determined, as a matter of federal law, by reference to the appropriate state statute of limitations." Courts within this circuit have consistently applied the three-month limitations period to suits seeking to vacate an arbitrator's award. *Cole* v. *United Steelworkers,* 441 F.Supp. 1346, 1351 (M.D. Pa. 1977), *aff'd mem.*, 588 F.2d 819 (3d Cir. 1978); *Siskey* v. *General Teamsters, Chauffeurs,* 419 F. Supp. 48, 50 (W.D. Pa. 1976); *UMWA* v. *Jones & Laughlin Steel Corp.*, 378 F.Supp. 1206,

---

[1] Section 301(a) provides, in relevant part:

> (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. §185.

1211-12 (W.D. Pa. 1974); *International Brotherhood* v. *Motor Freight Express,* 356 F.Supp. 724, 726 (W.D. Pa. 1973).

It is important to identify the nature of Liotta's first cause of action since the three-month statute of limitations of Pennsylvania's General Arbitration Act would apply only where one seeks to vacate an arbitrator's award. A fair reading of Liotta's complaint demonstrates that he seeks to vacate the arbitrator's decision. Paragraph 22 of his complaint alleges that he "was unfairly represented before, during and after Arbitration by the" attorney for the International Union. App., at 10. Paragraph 23 alleges that the "Arbitration itself was improper and unfair." App., at 12. Indeed, he sought to litigate before the district court the same claim he presented for arbitration, that of improper discharge.

Moreover, the fact that Liotta alleges that the arbitration award is invalid due to the Union's breach of its duty of fair representation does not change the limitations period because the suit here is against the Company and not the Union. Thus, it is clear that Liotta was dissatisfied with and simply seeks to upset the arbitrator's decision that the Company did not wrongfully discharge him.

The result we reach comports with the general federal policy favoring arbitration as a means of resolving labor disputes, *United Steel Workers of America* v. *Warrior & Gulf Navigation Co.,* 363 U.S. 574, 578 (1960), and with the federal labor policy that favors the application of shorter limitations period. In *International Union, UAW* v. *Hoosier Cardinal Corp.,* 383 U.S. 696, 707 (1966), the Supreme Court stated:

> [R]elatively rapid disposition of labor disputes is a goal of federal labor law. Since state statutes of limitations governing contracts not exclusively in writing are generally shorter than those applicable to wholly written agreements, their applicability to §301 actions comports with that goal.

Courts in other jurisdictions have consistently applied the statute of limitations pertaining to appeals from arbitration awards rather than the longer statute of limitations governing actions bottomed on written contracts when such actions seek to vacate arbitration awards. *E.g. Barbarino v. Anchor Motor Freight, Inc.*, 421 F.Supp. 1003 (W.D.N.Y. 1976); *DeLorio v. United Parcel Service, Inc.*, 401 F.Supp. 408 (D.Mass. 1975); *Hill v. Aro Corp.*, 275 F.Supp. 482 (N.D. Ohio 1967); *contra, Smart v. Ellis Trucking Co.*, 580 F.2d 215 (6th Cir. 1978), *cert. denied*, 440 U.S. 958 (1979).

We therefore conclude that Liotta's first cause of action seeking review and vacation of the arbitration award was untimely and that the Company's motion to dismiss should have been granted.

II.

The next issue we must consider concerns Liotta's claim under 42 U.S.C. §1981.[2] As a threshold matter, however, we must first address the Company's assertion that this claim is also time barred.

As with Section 301, 42 U.S.C. §1981 provides no explicit period of limitations and courts are bound to apply the most appropriate limitations period provided by state law. *Johnson v.*

---

[2]Section 1981 provides:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefits of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. §1981

Railway Express Agency, 421 U.S. 454, 462 (1975). This court in *Davis v. U.S. Steel Supply,* 581 F.2d 335 (3d Cir. 1978), held that the six-year statute of limitations for contracts under Pennsylvania law applied to a Section 1981 claim of unlawful discharge. We therefore conclude that Liotta's second cause of action under 42 U.S.C. §1981 is not barred as untimely.

With regard to the merits of Liotta's Section 1981 claim, the district court granted the Company's motion for summary judgment for the following reasons:

> The only evidence which plaintiff has submitted to the court in support of his allegations is a letter from Bobby Kaigler, Compliance Officer of the Erie Human Relations Commission (EHRC), which states that plaintiff testified before the EHRC on behalf of black complainants who were discharged by defendant and that "It is the belief of this office that Mr. James Liotta was terminated from his job because of his contant fight for 'Equal Rights' of all men." (Plaintiff's summary judgment exhibit 7n). This letter is not an affidavit and it has not been notarized. Consequently, the conclusory "belief" expressed in the letter, which is not based on personal knowledge, is insufficient to create or support an inference that racial discrimination played any part in plaintiff's discharge. Olympic Junior, Inc. v. David Crystal, Inc., 463 F. 2d 1141 (3rd Cir. 1972). No genuine issue of material fact supporting plaintiff's claim has been presented by plaintiff's evidence.

Liotta v. National Forge Company, Civ. No. 78-0025 (W.D. Pa. July 11, 1979) at 11-12, *reprinted in* App., at 45-46.

Liotta claims, however, that he also submitted to the district court the charge he filed with the Equal Employment Opportunity Commission (EEOC) listing a number of instances where he encouraged black employees to file charges against the Company. The affidavit which was attached to his EEOC charge and which was also before the court, alleged that the Company

discharged him in retaliation for his activities in support of the rights of black employees. Specifically, he averred:

> I have consistently attempted to eliminate discrimination as practiced by Respondent Employer against Black members of Local 1573 of the United Steelworkers of America. The Respondent Company systematically has violated the non-discrimination clause known as Appendix I of the collective bargaining agreement between National Forge and Local 1573. Some of the ways I opposed discrimination, included the following: I encouraged a large number of Union members to report their allegations of discrimination to the Erie Human Relations Commission; since I began duties as President of Local 1573 in October, 1975. I encouraged a number of Black workers to file charges with such Commission, and advised them of my knowledge of the best way to remedy the specific acts they were complaining of. I also fought the company on a day-to-day basis in trying to make conditions fair for all workers. I helped to take a case to arbitration on behalf of Black worker, Dennis Toliver. Shortly before my discharge, I had notified the Respondent Employer that two other grievances of Black workers (the grievances of Troy Johnson and Aaron Clanton) regarding discrimination claims, were going to be fought through the arbitration phase of the grievance procedure. I have appeared at a number of hearings of the Erie Human Relations Commission regarding the claims of discrimination by Black workers. Respondent Company has a history of unfair discharges of Black workers, and I have been active in opposing such practices.

App., at 51-52.

Our review of this document leads us to conclude that genuine issues of material fact are raised by Liotta's specific allegations. These are matters that clearly are in dispute and

they are material because if proven they could support a finding that the Company's actions against Liotta were motivated by a racial animus.

In addition, contrary to the Company's argument, it is clear that Liotta has set forth specific facts, not merely conclusory allegations of wrongdoing by the Company. Moreover, the Company has not denied that these documents were in fact before the district court as part of the record. Instead, the Company challenges the EEOC affidavit as not complying with the technical requirements of Fed. R. Civ. P. 56(e) in that it was not alleged to be based on personal knowledge. That this argument is specious is evident from a reading both of the affidavit and of Rule 56(e). First, Rule 56(e) does not require that the affiant state affirmatively that the averments are based on personal knowledge. Rather, the Rule provides:

> Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

A reading of Liotta's EEOC affidavit shows that it was "made on personal knowledge," "set[s] forth . . . facts as would be admissible in evidence," and "show[s] affirmatively that [he] is competent to testify to matters stated therein."

The fact that these allegations may not be proved at trial if the jury chooses to believe the Company is irrelevant at this stage. What is relevant is that the parties have focused on specific, pertinent issues of fact and disagree strenuously about them. We therefore conclude that summary judgment was inappropriate and that the case should be remanded on the Section 1981 claim. *See Bryson v. Brand Insulations, Inc.*, No. 79-2042, slip op. at 7 (3d Cir. Apr. 30, 1980).

III.

Accordingly, we will affirm the district court's judgment as to Count I of the appellant's complaint. We will reverse the district court's grant of summary judgment on the appellant's Section 1981 claim and remand for further proceedings.

A True Copy:

Teste:

Clerk of the United States Court
of Appeals for the Third Circuit

APPENDIX C
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 79-2124 and 79-2252

James J. Liotta, an individual,
Appellant in No. 79-2124

v.

National Forge Company,
Appellant in No. 79-2252

(D.C. Civil No. 78-0025 Erie)

On Appeal From The United States District Court
For The Western District Of Pennsylvania

Present: SEITZ, Chief Judge and VAN DUSEN
and HIGGINBOTHAM, Circuit Judges

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Western District of Pensylvania and was argued by counsel on July 8, 1980.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, filed July 11, 1979, be, and the same is hereby affirmed as to the district court's grant of summary judgment on Count I of the Appellant's claim under section 301 of the National labor Relations Act, 29 U.S.C. § 185; the district court's grant of summary judgment on Count II of the Appellant's claim under 42 U.S.C. § 1981 be and the same is hereby reversed, and the cause is remanded for further proceedings consistent with the opinion of this Court.

ATTEST:

/s/ Illegible

Clerk

September 10, 1980